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## GOVERNMENT NOTICE

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### DEPARTMENT OF CORRECTIONAL NOTICE

No. 143

27 February 2012

#### CORRECTIONAL SERVICES ACT, 1998 (ACT NO. 111 OF 1998)

#### AMENDMENT OF THE CORRECTIONAL SERVICES REGULATIONS, 2004

The Minister of Correctional Services has, under sections 79(8) and 134 of the Correctional Services Act, 1998, (Act No. 111 of 1998), amended the Correctional Services Regulations, 2004, as set out in the Schedule to commence on **1 March 2012**.

#### SCHEDULE

##### Definition

1. In this Schedule, "the Regulations" mean the Correctional Services Regulations, 2004, promulgated by Government Notice No. R 914 of 30 July 2004, as amended by Government Notice No. R 687 of 3 August 2007.

##### Amendment of Regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by:

(a) the insertion before the definition of "**cared-for child**" of the following:

"**Area Commissioner**" means a correctional official, appointed by the National Commissioner, in charge of all correctional officials who are on the establishment of a management area or office or who have been attached for duty".;

(b) the insertion after the definition of “**clinical trials**” of the following definition:

“**correctional health facility**” means a facility where primary health care services are provided and this includes a primary health care clinic or in-patient facility.”;

(c) the insertion after the definition of “**health status**” of the following definition:

“**International instrument**” means international agreements, treaties, conventions, guidelines and protocols of the United Nations and other Regional institutions, to which the Republic of South Africa is signatory.”; and

(d) the deletion of the definition of ‘**prison hospital**’.

### **Amendment of Regulation 2 of the Regulations**

3. Regulation 2 is hereby amended by:

(a) the substitution for paragraph (a) of sub-regulation (3) of the following paragraph:

“(a) Every inmate and every cared-for child must, within twenty four hours after admission and before being allowed to mix with the general inmate population, undergo a health status examination by either a correctional medical practitioner or registered nurse, who must record the health status of such inmate or child and confirm such person’s medical history if necessary.”;

(b) the addition to sub-regulation (3) of the following paragraphs:

“(c) The Head of the Correctional Centre must facilitate the process of proper placement of a child who has been admitted with a female inmate and the Department of Social Development must immediately be informed of such female inmate as contemplated in section 20(1A) of the Act.

(d) Treatment of inmates must at all times be in accordance with binding, international instruments relating to their treatment.”.

### **Amendment of Regulation 4 of the Regulations**

4. Regulation 4 of the Regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

- “(2) The diet must provide for a balanced distribution of food items according to the following food groups, namely-
- (a) grain;
  - (b) fruits and vegetables;
  - (c) dairy;
  - (d) meat and protein; and
  - (e) fats, oils and sugar.”.

#### **Amendment of Regulation 5 of the Regulations**

5. Regulation 5 of the Regulations is hereby amended by the deletion of sub-regulation (2) and sub-regulation (3) to be renumbered (2).

#### **Amendment of Regulation 7 of the Regulations**

6. Regulation 7 of the Regulations is hereby amended:

- (a) By the substitution of sub-regulation 4 of the following:

“(4) A registered nurse must attend to all sick offenders and remand detainees, which shall include pregnant woman and the mentally ill, as often as is necessary, but at least once a day.;

- (b) by the substitution for sub-regulation (13) (a) of the following sub-regulation:

“(13) (a) An offender who is certified in terms of Chapter VII of the Mental Health Care Act, 2002 (Act No. 17 of 2002), may not be detained in a correctional centre and must be transferred to a designated health establishment as defined in section 1 of that Act.”; and

- (c) by the insertion in sub-regulation after paragraph (b) of the following paragraph:

“(c) A person who is directed by a court in terms of sections 77 or 78 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) to be detained pending the decision of a Judge in Chambers in terms of section 47 of the Mental Health Care Act, 2002 (Act No. 17 of 2002), must be transferred as soon as possible to a designated health establishment in terms of section 42 of that Act.”.

**Amendment of Regulation 8 of the Regulations**

7. Regulation 8 of the Regulations is hereby amended by:

(a) the substitution for sub-regulation (4) of the following sub-regulation:

“(4) The Head of the Correctional Centre may authorize a correctional official, in writing, that communications between an inmate and a member of the public, including letters and communications, including electronic communications, in the course of a visit, be opened, read, listened to or otherwise intercepted with the assistance of an agency mandated by legislation, or blocked if not a subject of a legal privilege, by a correctional official, mechanical device, or electronic device, where the Head of the Correctional Centre believes on reasonable grounds -

(a) that the communications contain or will contain evidence of -

- (i) an act that will jeopardize the security of the correctional centre or the safety of any person; or
- (ii) a criminal offence or a plan to commit a criminal offence; and”;

(b) the substitution for sub-regulation (5) of the following sub-regulation:

“(5) Where a communication is intercepted under sub-regulation (4) the Head of the Correctional Centre or the correctional official designated by him or her must as soon as reasonably practicable after such interception inform the inmate, in writing, of the reasons for the interception and give the inmate an opportunity to make representations with respect thereto, unless the information would adversely affect an ongoing investigation, in which case the inmate must be informed of the reasons and given an opportunity to make representations with respect thereto on completion of the investigation.”.

**Amendment of Regulation 9 of the Regulations**

8. Regulation 9 of the Regulations is hereby amended by the substitution for paragraph (c) of sub-regulation (1) of the following paragraph:

“(c) The National Commissioner may for humanitarian reasons at the written request of the spouse, partner or next of kin, allow the body of the deceased inmate to be transported at State expense to another magisterial district. The cost of the burial is to be borne by the person requesting the transportation as prescribed by the Order.”.

## **Amendment of Regulation 10 of the Regulations**

9. Regulation 10 of the Regulations is hereby amended by:

(a) the substitution for the heading of the following heading:

**“Correction, Development and Care Programmes and Services”;**

(b) the substitution for sub-regulation (1) of the following sub-regulation:

“(1) (a) Social work services must be rendered to sentenced offenders and persons under community corrections who have a need for such services by a social worker duly registered as such in terms of the Social Work Act, 1978 (Act No. 110 of 1978).”;

(c) the substitution for paragraph (c) of sub-regulation (2) of the following paragraph:

“A qualified educator or technical educator registered with the South African Council of Educators established in terms of section 4 of South African Council for Educators Act, 2000 (Act No. 31 of 2000), must render those services.”;

(d) the deletion of paragraph (d) of sub-regulation (2);

(e) the substitution of paragraph (e) of sub-regulation (2) of the following paragraph:

(e) If such qualified educator or qualified correctional official is not available, the National Commissioner may appoint a temporary educator or voluntary worker with educational or technical qualifications and registered with the South African Council of Educators.” and,

(f) the addition of paragraph (f) after paragraph (e) of sub-regulation (2):

(g) All sentenced offenders who have not obtained the ninth grade as contemplated in section (3)(1) of the South African Schools Act, 1996 (Act No. 84 of 1996), must attend educational programmes until such offender reaches the age of 25 years or the ninth grade or adult education and training level 4, as registered on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), whichever occurs first. The Department must, within its available resources, ensure that such offenders are provided with the necessary resources to enable them to comply with this requirement.”.

**Amendment of Regulation 14 of the Regulations**

10. Regulation 14 of the Regulations is hereby amended by the substitution for the heading of the following heading:

**“Discipline of inmates”.**

**Amendment of Regulation 16 of the Regulations**

11. Regulation 16 of the Regulations is hereby amended by the addition to sub-regulation (1) of the following paragraphs:

“(c) Searches of inmates that require medical technology, as well as body cavity searches, must be referred to a health establishment as defined in the National Health Act, 2003 (Act No. 61 of 2003) with the required resources.

(d) If it is found that the foreign body that was swallowed or inserted in a bodily orifice is not excreted by normal bodily processes the inmate must be interviewed to determine the type of foreign body swallowed or inserted and be referred to the nearest private or public health establishment as defined in the National Health Act, 2003 (Act No. 61 of 2003) in consultation with a health care professional for assessment and removal thereof.”.

**Amendment of Regulation 17 of the Regulations**

12. Regulation 17 of the Regulations is hereby amended by:

(a) the addition to sub-regulation (1) of the following sub-regulation:

“(2) the fingerprints, photographs and biometric data of an inmate must be taken, as prescribed by the Order”; and;

(b) the addition after sub-regulation (2) of the following sub-regulation:

“(3) (a) Where necessary an inmate may be taken to a medical practitioner to ascertain his or her age as contemplated in section 28 (1) (e) of the Act.

(b) In the case of a person serving a life sentence and it is disputed whether such a person has reached the age of 65, the Head of the Correctional Centre must refer the person to a medical practitioner and if the assessment of the medical practitioner is different from what the age on any document professes to be, the National Commissioner must make a determination.”.

### **Amendment of Regulation 19 of the Regulations**

13. Regulation 19 of the Regulations is hereby amended by:

(a) the substitution for sub-regulation (1) of the following:

“(1) The only non-lethal incapacitating devices that may be used by trained correctional officials are the following:

- (a) Chemical agents;
- (b) Electronically activated devices; or
- (c) Rubber missiles”; and;

(b) the substitution for sub-regulation (2) of the following:

“(2) (a) An inmate may under no circumstances be allowed to handle any type of chemical agent used for incapacitating inmates.

(b) Gas masks must be issued to correctional officials who are involved in a situation in which chemical agents are used.

(c) The Head of the Correctional Centre or the Head of Community Corrections must decide when chemical agents in the form of either cartridges or grenades must be used.

(d) The Head of the Correctional Centre or the Head of Community Corrections must decide to which correctional officials chemical agents or spray-cans may be issued in the performance of their custodial duties.

(e) The seal of the chemical agent canister may only be broken if it is to be used.

- (f) Chemical agent grenades may only be used in the open air, in buildings chemical agent cartridges and chemical agent canisters must be used.
- (g) If chemical agents, are used measures must be applied, if necessary, to provide inmates with first aid or medical treatment.”.

#### **Amendment of Regulation 23 of the Regulations**

14. Regulation 23 of the Regulations is hereby amended by:

- (a) The substitution for paragraph (a) of sub-regulation (6) of the following paragraph:

“(a) On Sundays or other religious days of rest, with reference to the faith to which an inmate adheres to, an inmate may only perform that work which is prescribed by the Order and which is essential for cleanliness and hygiene in and around the Correctional Centre where he or she is detained, and work which is essential to provide for the basic needs of the correctional centre population and for the purposes of animal production.” And;

- (b) The deletion of paragraph (b) of sub-regulation (6).

#### **Amendment of Regulation 24 of the Regulations**

15. (a) Regulation 24 of the Regulations is hereby amended by the deletion of sub-regulation (1) (b); and,

- (b) by the substitution for paragraph (b) of sub-regulation (6) of the following paragraph:

“(b) A summary of the reasons for a recommendation on a sentenced offender’s conditional placement or release must be provided to the National Commissioner, Correctional Supervision and Parole Board or the Minister, as the case maybe, who decides on the placement or release of an offender.”.



**Insertion of Regulation 25A in the Regulations**

16. Regulation 25A of the Regulations is hereby inserted after Regulation 25:

**"25A Register for Sex Offenders**

- (1) The National Commissioner must in terms of section 50(5)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) provide, in the prescribed manner particulars as required in terms of section 49, of the said Act, to the Registrar of the National Register for Sex Offenders.
- (2) The National Commissioner must inform each offender of the implications thereof in the manner prescribed by that Act."

**Substitution of Chapter IV of the Regulations**

17. The following Chapter is hereby substituted for Chapter IV of the Regulations:

**"CHAPTER IV****MANAGEMENT, SAFE CUSTODY AND WELL BEING OF REMAND  
DETAINEES****26 Other Categories of Remand Detainees**

Any person committed to a remand detention facility or a correctional centre, as the case may be, in terms of section 30 of the Magistrates Courts Act, 1944 (Act No. 32 of 1944), section 19 of the Supreme Court Act, 1959 (Act No. 59 of 1959) or section 185 of the Criminal Procedure Act, 1997 (Act No 51 of 1977) must be afforded the same rights and privileges and is subject to the same obligations and limitations as a remand detainee.

**26A Food and drink**

- (1) (a) Remand detainees may only receive food or drink sent or brought to them for consumption at the following meal and such food or drink must be appropriately wrapped or sealed.  
  
(b) No article of food or drink which not clean or free from contamination will be allowed and the Head of the remand detention facility or correctional centre, as the case may be, or a correctional official authorized by him or her may examine or test such food or drink. Food or drink may only be delivered or sent during official visiting hours.
- (2) Food that needs preparation is not allowed and preserved or canned food may not be brought into the remand detention facility or the correctional centre, as the case may be.
- (3) A remand detainee shall have the right to be informed of the identity of the sender of the food or drink and retains the right not to accept it, in which case the Head of the remand detention facility or correctional centre, as the case may be, may dispose of such food or drink as he or she deems fit.

**26B Amenities**

- (1) Access of a remand detainee to amenities may be limited as prescribed by the Order as is necessary for the maintenance of security and good order.
- (2) In a case where no specific provision is made for access to or the limitation of amenities, the Head of the remand detention facility or correctional centre, as the case may be, may allow or limit such, taking into account the maintenance of security and good order.

**26C Clothing and bedding**

- (1) On admission to a remand detention facility or correctional centre as the case may be, a remand detainee must be provided with a complete outfit of clothing and bedding as prescribed by the Order.
- (2) When a remand detainee is to appear in any court proceedings he or she must appear in private clothing and if a remand detainee does not have adequate or proper clothing the Department must provide such clothing as prescribed by the Order.

**26 D Pregnant women**

- (1) Pregnant women in remand detention must have access to pre-, intra and post natal services.
- (2) If the medical practitioner or registered midwife prescribes any form of medication or treatment additional to what is normally recommended, the Head of the remand detention facility or correctional centre or an official authorised by him or her, as the case may be, must arrange to provide such.
- (3) The Head of the remand detention centre or correctional centre, as the case may be, or a correctional official authorized by him or her must inform the investigating officer and prosecutor of the pregnancy of a remand detainee.
- (4) The Head of the remand detention facility or correctional centre or an official authorised by him or her, as the case may be, must inform the next of kin of the pregnancy of the detainee if so requested by the pregnant remand detainee.
- (5) The pregnant remand detainee may request additional visits with the alleged biological father, next of kin or other supportive persons over and above the normal visits allowed.
- (6) Pregnant and lactating remand detainees must be provided with food items according to their nutritional needs as prescribed in the Department of Health's Maternal Health Guidelines as well as the Departmental ration scales and Therapeutic Diet Manual, taking into consideration religious or cultural beliefs.

**26E Labour of remand detainees**

A remand detainee must perform such duties as may be necessary to maintain the good order and cleanliness of any cell, room or other place occupied by him or her and may be permitted to perform other labour.

**26F Safekeeping of information and records**

All warrants of detention and related documentation must be kept at the remand detention facility for a period of five years from the date of the last court appearance as a remand detainee after which period it must be forwarded to a Departmental archive if the remand detainee is not sentenced to incarceration. Such records must be transferred to an archives repository after 20 years as contemplated in section 11 of the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996). If the remand detainee is sentenced to incarceration the warrant or warrants of detention must be kept with the sentenced warrant or warrants.

**26G Referral of terminally ill or severely incapacitated remand detainee to court**

- (1) In assessing whether a remand detainee must be referred to court as contemplated in section 49E of the Act the medical practitioner must establish whether the remand detainee is suffering from any condition contemplated in regulation 29A(5).
- (2) The report of the medical practitioner shall be in writing and must include, *inter alia* –
  - (a) a complete medical diagnosis and prognosis of the terminal illness or physical incapacity from which the remand detainee suffers;
  - (b) a statement by the medical practitioner indicating whether the remand detainee is so physically incapacitated as to severely limit daily activity or self-care;
  - (c) the care and treatment required by the remand detainee;
  - (d) whether the particular remand detention facility is able to provide adequate care for the detainee; and
  - (e) if the facility is unable to provide adequate care, reasons as to why the release of the remand detainee should be considered.
- (3) The Head of the remand detention facility or correctional centre, as the case may be, may refer the report to the Medical Parole Advisory Board established in terms of section 79(3)(a) of the Correctional Services Act, to provide an independent medical report in order to assist the Head to form an opinion as required by section 49E(1).
- (4) Prior to the referral of the remand detainee to court, the Head of the remand detention facility or correctional centre, as the case may be, must determine whether there are other remand detention facilities—
  - (a) able to provide adequate care for the remand detainee; and
  - (b) serve the court where the remand detainee is due to appear.
- (5) The written report of the medical practitioner and any report of the Medical Parole Advisory Board, must accompany the sworn statement or affirmation by the Head of the remand detention facility or correctional facility concerned.
- (6) An application must be brought with the informed consent of the remand detainee or a person acting on his or her behalf if such remand detainee is too ill or incapacitated to provide such consent.

**26H Release under supervision of South African Police Service**

- (1) The investigating officer requesting the release of the remand detainee, must produce his or her original identity document and appointment card to the Head of the Correctional Centre or the Remand Detention Facility or to a correctional official authorised by him or her, as the case may be, and the original authorization to request the temporary release of a remand detainee.
- (2) The authorization document, the authenticity and validity of which must be confirmed as prescribed by order, should indicate where the remand detainee will be accommodated whilst in police custody.
- (3) Any remand detainee so released in the custody of the South African Police Service, should be returned to the remand detention facility or correctional centre, as the case may be, 48 hours prior to his or her appearance in court.
- (4) In the event of failure to return a remand detainee within such period, the Head of the remand detention facility or the correctional centre as the case may be, must inform the National Commissioner in order to take appropriate steps to ensure the appearance of the remand detainee at court.

**26I Maximum incarceration period**

- (1) The period as contemplated in section 49G of the Act commences from the date of admission in a remand detention facility for an uninterrupted period which period will be deemed not to be interrupted by court appearances, temporary releases in terms of section 49F, temporary releases to be treated in a medical facility or designated health establishment in terms of section 42 of the Mental Health Care Act, 2002 (Act No. 17 of 2002) outside a correctional centre or remand detention facility, as the case may be.
- (2) If the remand detainee is admitted with more than 1 warrant of detention on the same date, the calculation must be done for each individual warrant to establish the period as contemplated in section 49F of the Act.
- (3) If a remand detainee who is already detained under a warrant receives a further warrant or warrants, the calculation must be done for each individual warrant or warrants.

- (4) If the remand detainee is not readmitted on the same day, except where he or she was admitted into the custody of the South African Police Service or to a designated health establishment in terms of section 42 of the Mental Health Care Act, 2002 (Act No. 17 of 2002), the period will be regarded as being interrupted and on readmission for the same case the period of incarceration will be calculated afresh as from the date of such readmission.
- (5) When a sentenced offender's sentence expires but such offender must be detained under a warrant for a further charge such remand detainee must be admitted to a remand detention facility, and the calculation of the period will commence on the date of admission to such facility.

#### **Insertion of Regulations 29A and 29B in the Regulations**

- 18. The following regulations are hereby inserted after regulation 29 of the Regulations:

##### **“29A Medical Parole**

- (1) If it is established by the health status examination as contemplated in section 6(5) of the Act or any subsequent health status examination that a sentenced offender is suffering from a condition of which the prognosis indicate a condition listed in sub-regulation (5), such facts must be recorded in the prescribed register.
- (2) An application for medical parole in terms section 79(2) of the Act, shall be initiated by the completion of the applicable form as contained in Schedule B.
- (3) When a Head of a Correctional Centre receives an application for medical parole he or she must refer the application to the correctional medical practitioner who must make an evaluation of the application in accordance with the provisions of section 79 of the Act and make a recommendation in this regard.
- (4) The recommendation must be submitted to the Medical Parole Advisory Board who must make a recommendation to the National Commissioner, Supervision and Parole Board or Minister as the case may be.
- (5) In the assessment by the Medical Parole Advisory Board, the Board must consider whether the offender is suffering from:

(a) Infectious conditions -

- (i) World Health Organisation Stage IV of Acquired immune deficiency syndrome despite good compliance and optimal treatment with anti retroviral therapy;
- (ii) Severe cerebral malaria;
- (iii) Methicilin resistance staph aurias despite optimal treatment;
- (iv) MDR or XDR tuberculosis despite optimal treatment; or

(b) Non-Infectious conditions -

- (i) Malignant cancer stage IV with metastasis being inoperable or with both radiotherapy and chemotherapy failure;
- (ii) Ischaemic heart disease with more than two ischaemic events in a period of one year with proven cardiac enzyme abnormalities;
- (iii) Chronic obstructive airway disease grade III to IV dyspnoea;
- (iv) Cor-pulmonale;
- (v) Cardiac disease with multiple organ failure;
- (vi) Diabetes mellitus with end organ failure;
- (vii) Pancytopenia;
- (viii) End stage renal failure;
- (ix) Liver cirrhosis with evidence of liver failure;
- (x) Space occupying lesion in the brain;
- (xi) Severe head injury with altered level of consciousness;
- (xii) Multisystem organ failure;
- (xiii) Chronic inflammatory demyelinating Poliradiculoneuropathy;
- (xiv) Neurological sequelae of infectious diseases with a Karnofsky score of 30 percent and less;
- (xv) Tetanus;
- (xvi) Dementia, and
- (xvii) Severe disabling rheumatoid arthritis, and whether such condition constitutes a terminal disease or condition or the offender is rendered physically incapacitated as result of injury, disease or illness so as to severely limit daily activity or inmate self-care.

- (6) The Medical Parole Advisory Board may consider any other condition not listed in sub-regulation (5) (a) and (b) if it complies with the principles contained in Section 79 of the Act.

- (7) The Medical Parole Advisory Board must make a recommendation to the National Commissioner, the Correctional Supervision and Parole Board or the Minister as the case may be, on the appropriateness to grant medical parole in accordance with section 79(1)(a) of the Act. If the recommendation of the Medical Advisory Board is positive, then the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, must consider whether the conditions stipulated in section 79(1)(b) and (c) are present.

## **29B Appointment and composition of the Medical Parole Advisory Board**

- (1) The Minister must appoint a Medical Parole Advisory Board comprising of:
- (a) A chairperson with permanent sitting on the Board or a *secundus* in his or her absence;
  - (b) A vice chairperson with permanent sitting on the Board or a *secundus* in his or her absence.
  - (c) At least one member per province, who will be a non- permanent member of the Board to be co-opted to the Board by direction of the chairperson, when necessary, for the functioning of the Board.
- (2) (a) Members appointed to the Board hold office for such period as the Minister determines at the time of their appointment.
- (b) If there are valid grounds for doing so, the Minister may terminate the appointment of a member.
- (3) Members appointed to the Board must be medical practitioners registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974).
- (4) The Board will meet at least once per month at such place as determined by the chairperson.
- (5) A meeting of the Board will be properly constituted if the chairperson, vice-chairperson or their *secundi* and three co-opted members are present.
- (6) A decision of the majority of the members of the Board present shall be a decision of the Board and in the event of an equality of votes, the member presiding shall have both a deliberative and a casting vote.
- (7) A member of the Board who is not in the service of the State may receive such allowances as may be determined by the Minister in consultation with the Minister of Finance.



- (8) (a) A member of the Board may examine any sentenced offender applying for medical parole under section 79 of the Act.
- (b) The allowances determined under sub-regulation (7) must make provision for the reimbursement of members of the Board for expenses incurred as a result of travelling necessitated under subparagraph (a).
- (c) Members of the Board shall, as far as possible, only examine offenders for the purpose of subparagraph (a) within the region wherein they are appointed.”.

#### **Substitution of the heading to Chapter VII of the Regulations**

19. The following regulation is hereby substituted for the heading of Chapter VII of Regulations:

**“Compliance Management”.**

#### **Substitution of Regulation 33 of the Regulations**

20. The following Regulation is hereby substituted for Regulation 33 of the Regulations:

##### **“33 Discipline**

- (1) Correctional officials at post levels 2 to 12 are subject to the Disciplinary Code and Procedure as provided for in resolution 1 of 2006 of the Departmental Bargaining Chamber, as ratified in the relevant Sectoral Bargaining Council as reflected in Schedule A hereto.
- (2) Correctional officials who are appointed in the Senior Management Service of the Public Service are subject to the Disciplinary Code and Procedure contained in the Senior Management Service Handbook.”.

#### **Substitution of Regulation 37 of the Regulations**

21. The following Regulation is hereby substituted for Regulation 37 of the Regulations:

**"37 Leave and abscondment**

- (1) Leave of absence may be granted to correctional officials as determined in the "Determination on Leave of Absence in the Public Service" issued by the Minister of the Public Service and Administration in terms of section 3 (3) (c) of the Public Service Act, 1994 and special leave as determined in resolution 2 of 2010 of the Departmental Bargaining Council.
- (2)
  - (a) A correctional official who absents himself or herself for 30 consecutive calendar days without permission or without notifying the National Commissioner shall be summarily dismissed.
  - (b) Before dismissing the correctional official, the National Commissioner must endeavour to establish the whereabouts of such official and record such endeavours.
  - (c) If the correctional official reports for duty after the period of absence without permission or without having notified the National Commissioner and being dismissed the correctional official will not be automatically reinstated but the correctional official may submit a written representation to the National Commissioner within five working days from his or her reporting at work as to why he or she should be reinstated or re-employed.
  - (d) The National Commissioner may after considering the written representation, reinstate or re-employ the correctional official in his or her former post or any other post. In the case of reinstatement the period of absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such conditions as the National Commissioner may determine. "

**Amendment of Regulation 38 of the Regulations**

22. Regulation 38 of the Regulations is hereby amended by –

- (a) the substitution for sub-regulation 38(2) of the following sub-regulation:

"(2) (a) The administration and control of the Fund is vested in a Board of Trustees with the powers, functions and duties as prescribed by the Order.

- (b) The Board consists of-
  - (i) The National Commissioner as chairperson;
  - (ii) The Chief Deputy Commissioner Corporate Services as deputy chairperson;
  - (iii) The Director Facilities Fund as Fund Executive;
  - (iv) Three Board Members elected by the members of the fund on a three yearly basis at the Annual General Meeting; and
  - (v) Three Non-Executive Members appointed by the National Commissioner for a term of three years with specialised knowledge in legal and or financial aspects.
- (c) Upon expiry of a term of office for an appointed member of the Board, he or she may be nominated again for a further term: Provided that no member may serve office for a period of more than two terms.
- (d) If a nominated member of the Board dies or vacates his or her office for any other reason, before the expiry of his or her term of office, the National Commissioner must appoint another person in his or her place and the person appointed thus remains in the post as an appointed member of the Board for the unexpired part of the term of office of the member who died or vacated office.
- (e) An appointed member of the Board evacuates his or her office
  - (i) If he or she becomes mentally or physically unfit to perform his or her duties;
  - (ii) If he or she retires, resigns or is dismissed from the Department;
  - (iii) If he or she dies; or
  - (iv) If his or her appointment to the Board is revoked by the National Commissioner for any other reason.”;
- (c) the substitution for paragraph (b) of sub-regulation (3) (b) of the following paragraph:

“(b) For the establishment and maintenance of holiday resorts where necessary.”;
- (d) the substitution for paragraph (a) of sub-regulation (4) of the following paragraph:

“(4) The assets of the fund consist of:

- (a) Monies, assets and investments, together with accrued interest or dividends which, with the approval of the Board, have been paid or transferred by any existing Correctional Services Benefit Fund or association of the Fund, for its sole benefit and ownership.”;

(e) the addition of the following paragraph to sub-regulation (4):

“(d) In conducting its business the Board will be subject to the provisions of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and the Financial Services Board Act, 1990 (Act No. 97 of 1990); and”;

(f) the addition of the following sub-regulations:

“(5) The Board of Trustees has the power to –

- (a) Receive any monies, assets, allocations, donations and interest or dividends raised on investments as well as other income in terms of Regulation 38 (4) (a) for and on behalf of the Board;
- (b) Keep in trust any monies in terms of paragraph (a) and to profitably invest any part of it which is not immediately required, with such security and in such a manner as Board determines;
- (c) Approve allocations and loans for purposes mentioned in regulation 38(3);
- (d) In terms of regulation 38 (2) (b) to sue in its own name and be sued and to obtain movable and immovable property, possess it or alienate it, and to take necessary steps, make arrangements, register bonds, and make commitments with any authorized financial services provider for obtaining the necessary funds with regard to procurement, or alienation of such movable or immovable property; and

(e) Take any measure to promote the interests of the Fund.

(6) The Board of Trustees must manage the financial affairs of the Fund and ensure that –

- (a) proper accounts of all financial matters of the Fund shall be kept by the Board;

- (b) all monies received on behalf of the Fund, must promptly be paid into a current account or other accounts in the name of the Fund at an authorized financial service provider as determined by the Board;
- (c) all payments, including electronic payments must be authorized in relation to such account by the secretary or treasurer and any other member of the Department of Correctional Services designated, by the Board;
- (d) cheques, bills of exchange, promissory notes, bank books and other financial documents of, or in aid of the Fund, must be signed or endorsed, as determined by the Board;
- (e) all expenditure related to, or resulting from the management or administration of the Fund, investments in aid of the Fund, auditor's fees and any other expenditure which have accumulated on behalf of the Fund by the Board, are carried by the Fund, subject to the approval of the Board;
- (f) balance sheets and statements of income and expenditure for the financial year of the Fund must be submitted to the Board and must be made available upon request for perusal by any member during office hours;
- (g) the books, documents and securities of the Fund must be audited annually by a chartered accountant, appointed by the Board; and
- (h) the funds must be used exclusively for investment and for objectives for which the Fund has been established.”.

### **Amendment of Regulation 39 of the Regulations**

23. Regulations 39 of the Regulations is hereby amended by –

- (a) the substitution for subparagraph (a) of sub-regulation (2) of the following:

“(2) (a) A departmental canteen established in terms of sub-regulation (1) must be controlled by a committee of which the Area Commissioner concerned will be the chairperson. The committee so constituted will exercise its functions as prescribed by the Order. Any correctional

official, including members of the Senior Management Service, in the conduct of the business of such canteen or in the management thereof will be subject to discipline contemplated in regulation 33, in the case of misconduct, when functioning in that capacity.”; and

(b) the substitution for paragraph (c) of sub-regulation (2) of the following:

“(c) A departmental canteen must be conducted on self supporting business principles, with the exception of accommodation or other necessities which may be provided by the State and any other expenditure which the National Commissioner may, in consultation with the National Treasury authorize from public funds.”.

### **Substitution of certain words in the Regulations**

24. The regulations are hereby amended by-

- (a) The substitution for the words specified in Column 1, wherever they occur, of the words specified in Column 2

<b>COLUMN 1</b>	<b>COLUMN 2</b>
“Area Manager”	“Area Commissioner”
“Commissioner”	“National Commissioner”
“Head of Prison”	Head of the Correctional Centre”
“Imprisonment”	“Incarceration”
“Medical Officer”	“Correctional Medical Practitioner”
“Prison”	“Correctional Centre”
“Prisons”	“Correctional Centres”
“Sentenced prisoner”	“Sentenced offender”
“Unsentenced prisoner”	“Unsentenced offenders”
“Order”	“the Order”

- (b) The substitution for the words specified in Column 1, wherever they occur in the Regulations specified in Column 2, of the words specified in Column 3.

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>
“Prisoner or Prisoners”	Regulation 1, 2, 3, 5, to 19 and 25	“Inmate or Inmates” or “an inmate” as the case may be
“Sentenced prisoner or	Regulations 7(12)(a),	“Sentenced offender or

sentenced prisoners"	10(1)(a), 10(2)(b), 22 and 23	Sentenced offenders"
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### **Amendment of Schedule A of the Regulations**

25. Schedule A to the regulations is hereby substituted by –

#### **"Schedule A**

#### **1. PURPOSE AND SCOPE**

The purpose of this Code and Procedures is:

- 1.1 To promote constructive labour relations in the DCS;
- 1.2 To promote mutual respect among employees and between employees and employer;
- 1.3 To ensure that managers and employees share a common understanding of misconduct and discipline;
- 1.4 To promote acceptable conduct;
- 1.5 To provide employees and the employer with a quick and easy reference for the application of discipline;
- 1.6 To avert and correct unacceptable conduct; and
- 1.7 To prevent arbitrary or discriminatory actions by managers toward employees;
- 1.8 To act in a preventative, progressive manner with the aim to correct unacceptable behaviour;
- 1.9 It must be noted that this document is a collective agreement and that no party will deviate from all the provisions from this code.

#### **2. PRINCIPLES**

The following principles are embraced in the Code and Procedure and must inform any decision to discipline an employee.

- 2.1 Discipline is a corrective measure and not a punitive one.
- 2.2 Discipline must be applied in a prompt, fair, consistent, uniform, timely, impartial, confidential and progressive manner.
- 2.3 Discipline is a line management function.
- 2.4 A disciplinary code is necessary for the efficient delivery of service and the fair treatment of employees, and ensures that they:
  - 2.4.1 Have a fair hearing in a formal or informal setting;
  - 2.4.2 Are timeously informed of allegations of misconduct made against them;
  - 2.4.3 Receive written reasons for a decision taken; and

- 2.4.4 Have the right to appeal against any decision.
- 2.5 As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all employees.
- 2.6 If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.
- 2.7 Disciplinary proceedings do not replace or seek to imitate court proceedings.
- 2.8 The Disciplinary Code and Procedures constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.
- 2.9 In the event that the employee denies an allegation of less serious misconduct, a formal disciplinary hearing may be instituted.
- 2.10 Employees can only be disciplined for work related misconduct.

### **3. SCOPE OF APPLICATION**

This Disciplinary Code and Procedure is applicable to all employees (levels 2 to 12) of the Department of Correctional Services employed in terms of the Correctional Services Act, Act 111 of 1998, as amended or the Public Service Act, 1994, as amended.

### **4 CODES, RULES AND STANDARDS**

- 4.1 The Code of Good Practice: Dismissal contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to discipline, constitutes part of this Code and Procedure.
- 4.2 Employee conduct that may warrant a disciplinary action is listed in Annexure A. This list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or could be reasonably expected to have been aware, that the conduct constituted grounds for disciplinary action.
- 4.3 In applying Annexure A, management must assess the seriousness of the alleged misconduct by considering:
  - 4.3.1 The nature of the employee's work and responsibilities;
  - 4.3.2 The extent of the alleged misconduct or any dishonesty displayed by the employee;
  - 4.3.3 The actual or potential impact of the alleged misconduct on DCS, the employee's component, colleagues and/or the public;
  - 4.3.4 The regularity of the misconduct;
  - 4.3.5 The circumstances in which the misconduct occurred;



- 4.3.6 Any other factor which, in the light of the peculiar circumstances prevailing at the place and time where the misconduct was committed, should be taken into consideration;
- 4.3.7 Whether, objectively seen, the employer/employee relationship has been damaged or has become intolerable.

## **5. PROCEDURES: DISCIPLINARY ACTIONS**

### **Less serious misconduct**

In the event of less serious misconduct, the supervisor may invoke any one of the procedures outlined in clauses 5.1 to 5.5 which he or she deems appropriate.

**5.1 Corrective counselling.** In cases where the seriousness of the misconduct warrants counselling, the manager of the employee must:

- 5.1.1 Bring the misconduct to the employee's attention;
- 5.1.2 Determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations, through himself/herself or by a union representative;
- 5.1.3 Seek to get agreement on how to remedy the conduct; and
- 5.1.4 Take steps to implement the agreed course of action.

**5.2 Verbal warnings.** In cases where the seriousness of the misconduct warrants a verbal warning, the supervisor/manager of the employee may give a verbal warning. The steps in clauses 5.1.1 and 5.1.2 must be followed. The supervisor/manager must inform the employee that further misconduct may result in more serious disciplinary action, and record the warning. The verbal warning will only be valid for 03 months.

**5.3 Written warnings.** In cases where the seriousness of the misconduct warrants a written warning, the supervisor/manager may give the employee a written warning. The steps in clause 5.1.1 and 5.1.2 must be followed. The following provisions apply to written warnings:

- 5.3.1 The written warning may use the form of Annexure B.
- 5.3.2 The supervisor/manager must give a copy of the written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the supervisor/manager must hand the warning to the employee in the presence of another employee; both the supervisor and the other employee must sign in confirmation that the written warning was conveyed to the employee.

- 5.3.3 The written warning must be filed in the employee's personal file.
- 5.3.4 A written warning remains valid for six months. At the expiry of the six months, the written warning must be removed from the employee's personal file and destroyed.
- 5.3.5 If during the six-month period, the employee is subjected to disciplinary action on a same or related offence; the written warning may be taken into account in deciding an appropriate sanction.

**5.4 Final written warnings.** In cases where the seriousness of the misconduct warrants a final written warning, the manager may give the employee a final written warning. The steps in clause 5.1.1 and 5.1.2 must be followed. The following provisions apply to final written warnings:

- 5.4.1 The final written warning may use the form of Annexure C.
  - 5.4.2 The manager must give a copy of the final written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee; both the supervisor and the other employee must sign in confirmation that the final written warning was conveyed to the employee.
  - 5.4.3 The final written warning must be filed in the employee's personal file.
  - 5.4.4 A final written warning remains valid for six months. At the expiry of the six months, the final written warning must be removed from the employee's personal file and destroyed.
  - 5.4.5 If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the final written warning may be taken into account in deciding an appropriate sanction.
- 5.5 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

## **6. SERIOUS MISCONDUCT**

If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 5, the employer must initiate a disciplinary enquiry. The employer must appoint an employee as a representative (Initiator) in writing, who as far as possible should be the manager/ supervisor of the employee, to initiate the enquiry.

## **7. DISCIPLINARY HEARING**

### **7.1 Notice of hearing**

- 7.1.1 The employee must be given notice at least seven working days before the date of the hearing.
  - 7.1.2 The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who can sign in confirmation that the notice was conveyed to the employee.
  - 7.1.3 The written notice of the disciplinary meeting must use the form of Annexure D, and provide:
    - 7.1.3.1 A clear description of the allegations of misconduct and the main evidence on which the employer will rely;
    - 7.1.3.2 Details of the time, place and venue of the hearing; and
    - 7.1.3.3 Information on the rights of the employee to representation by a fellow employee or a representative or officials of a recognized trade union, and to bring witnesses to the hearing;
    - 7.1.3.4 A summary of the investigation report and statements to be used by the employer.
- NB: SUMMARY of the investigation report should contain the following: the facts established a conclusion and a decision.
- NNB: Finalization of the investigation shall be the date on which the delegated authority takes the decision whether to charge or not to charge the employee.

### **7.2 Precautionary suspension**

- 7.2.1. The employer may suspend an employee on full pay or transfer the employee if:
  - 7.2.1.1 The employee is alleged to have committed a serious offence; and;
  - 7.2.1.2 The employer believes that the presence of an employee at the workplace might jeopardize any investigation into the alleged misconduct, or endanger the well being or safety of any person or state property.
- 7.2.2 A suspension of this kind is a precautionary measure that does not constitute a judgment. An employee shall not be suspended without salary or normal benefits. Benefits shall not include overtime payment or danger and/or special danger allowances.

- 7.2.3 If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within 60 calendar days, depending on the complexity of the matter and the length of the investigation. If after 60 days of suspension the disciplinary hearing has not been instituted the suspended employee may return to work. Depending on the seriousness of the alleged misconduct, the Employer may extend the suspension for a further 30 days. If after such period the disciplinary hearing has not been instituted the employee must return to work. If the disciplinary hearing has been instituted the employer shall determine when the employee can return to work.

### **7.3 Conducting the disciplinary hearing**

- 7.3.1 The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 7.1.1 is delivered to the employee.
- 7.3.2 The formal disciplinary hearing should be finalized within a period of 60 days from the date of finalization of the investigation. If the time frame cannot be met, the parties involved must be informed accordingly with reasons for the delay. If the employer, without good reason, fails to institute disciplinary proceedings within a period of 4 months after completion of the investigation, disciplinary action shall fall away.
- 7.3.3 The Chair of the hearing must be appointed by the employer and be an employee on a higher grade than the alleged transgressor.
- 7.3.4 The Initiator, if appointed from the same Management Area, must be of equal or higher rank than the alleged transgressor. If appointed from another Management Area, the Initiator need not be of equal or higher rank than the alleged transgressor, but competency shall be the determining factor.
- 7.3.5 The employer and the employee charged with misconduct may agree that the disciplinary hearing will be chaired by an arbitrator from the relevant Sectoral Bargaining Council appointed by the council. The decision of the arbitrator will be final and binding and only open to review in terms of the *Labour Relations Act, 1995*. All the provisions applicable to disciplinary hearings in terms of this Code will apply for purposes of these hearings. The Employer will be responsible to pay the costs of the arbitrator.
- 7.3.6 If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognized trade union.

- 7.3.7 If necessary, an interpreter may attend the hearing.
- 7.3.8 In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –
  - 7.3.8.1 The employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or
  - 7.3.8.2 The disciplinary hearing is conducted in terms of paragraph 7.3.5. For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.
- 7.3.9 If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence.
- 7.3.10 The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting.
- 7.3.11 The chair will read the notice for the record and start the hearing.
- 7.3.12 The representative of the employer will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witness introduced by the representative of the employer.
- 7.3.13 The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.
- 7.3.14 The chair may ask any witness questions for clarification.
- 7.3.15 If the chair decides that the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it.
- 7.3.16 Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.
- 7.3.17 The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file / G102 and PERSAL.

## 7.4 Sanctions

7.4.1. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within the period referred to in clause 7.3.17), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanctions consist of:

- 7.4.1.1 Counselling;
- 7.4.1.2 Verbal warning;
- 7.4.1.3 A written warning valid for six months;
- 7.4.1.4 A final written warning valid for six months;
- 7.4.1.5 Suspension without pay, for no longer than three months;
- 7.4.1.6 Demotion by a post level as an alternative to dismissal, such demotion shall be consented to by the employee.
- 7.4.1.7 Dismissal.  
(7.4.1.5 and 7.4.1.6 as alternatives to dismissal)

7.4.2. The employer shall not implement the sanction during an appeal by the employee.

7.4.3. The chairperson must communicate the final outcome of the hearing to the employee within five (5) *working days* after the conclusion of the disciplinary hearing, and the outcome must be recorded on the personal file (and the relevant Registration file and PERSAL records (and G102) must be updated) of the employee.

## 7 Appeal

8.1 An employee may appeal a finding or sanction by completing Annexure E. The appeal shall be in the form of a documentary (paper) appeal.

8.2 The employee must, within five working days of receiving the notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to his/her Personnel Office or to his/her manager/supervisor, who must acknowledge receipt thereof and who shall then forward it to the appeal authority.

8.3 The appeal authority may, on good cause shown, condone the late lodging of an appeal.

8.4 The appeal authority, who shall consider the appeal in non-dismissal cases, shall be:

8.5 A manager of higher grade than the chairperson of the original hearing; and  
8.5.1.1 Who was not involved in the decision to institute disciplinary proceedings.

8.6 The appeal authority, who shall consider the appeal in dismissal cases, shall be:

8.5.1 The Deputy Regional Commissioner/Deputy Commissioner who may be assisted by the Regional Heads of Legal Services and Employee Relations, and who

8.6.1.1 Was not involved in the decision to institute the disciplinary proceeding.

8.7 If the persons referred to in paragraphs 8.4 and 8.5 require a hearing [new evidence], she or he shall notify the employee of the date and place.

8.8 The appeal authority may:

8.8.1 Find the appellant not guilty and set aside the verdict and sanction; and/or

8.8.2 Confirm the verdict of the disciplinary hearing and reduce the sanction;

8.8.3 Confirm the verdict and sanction of the disciplinary proceeding; or

8.8.4 Order a hearing de novo i.e. a complete re-hearing by a new impartial chairperson, only if found that the initial hearing contained gross procedural errors that were material to the employee's dismissal.

8.9 The appeal authority must provide reasons for his/her decision.

8.10 The Department must finalize appeals within 30 working days from the date of the receipt of the appeal, failing which, in cases where the employee is on suspension after dismissal; he/she (after the expiry of the 30 working days) must resume duties immediately and await the outcome of the appeal. The Area Commissioner shall decide on the placement of the employee.

## **9 General**

### **9.1 Desertion/abscondment**

An employee who absents him/herself for 30 consecutive (calendar) days without permission or without notifying the employer shall be summarily dismissed.

However, before dismissing the employee, the employer must endeavour to establish the whereabouts of the employee. Upon the employee's reappearance after desertion, he/she may not be reinstated. The employee must make written representations to the delegated authority within 5 days from his/her reappearance should he/she wishes reinstatement/re-employment to be considered.

## **DEFINITIONS**

In this procedure, references to the male gender include the female gender.

"Employer" means the head of department or any member of his/her department designated to perform the specific action, unless the context indicates otherwise.

"Fellow employee" means an employee from the same office/institution/Management Area than the employee charged with misconduct, except full-time shop stewards.

"Recognized trade union" means all the unions admitted to the DCS Bargaining Chamber and recognized in the DCS."

**ANNEXURE A****CODE OF CONDUCT / ACTS OF MISCONDUCT**

*An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):*

- (a) Fails to comply with, or contravenes an Act, regulation or legal obligation.
- (b) Mismanages the finances of the State.
- (c) Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor.
- (d) Misuse/abuse of movable/immovable property of the State.
- (e) Damage to and or cause loss of state property.
- (f) Endangers the lives of self or others by disregarding safety rules or regulations.
- (g) Prejudice the administration, discipline or efficiency of a department, office or institution of the State.
- (h) Misuse of position in the DCS to promote or to prejudice the interest of any political party organization, company or individual.
- (i) Theft, bribery, fraud, corruption or any combination thereof.
- (j) Accepts any compensation in cash or otherwise from a member of the public, another employee or an offender for performing her or his duties without written approval from the department.
- (k) Fails to carry out a lawful order or routine instruction without just or reasonable cause.
- (l) Absence or repeated absence from work without a valid reason or permission.
- (m) Commits an act of sexual harassment.
- (n) Discriminates on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.



- (o) Poor or inadequate performance for reasons other than incapacity.
- (p) Dereliction of duties.
- (q) Allowing a disciplinary hearing to fall away (Refer to clause 7.3.2 of the Procedure).
- (r) Performing of work for compensation in a private capacity for another person or organization either during or outside working hours without written approval.
- (s) Breaching the conditions pertaining to authorized private work.
- (t) Sleeping on duty.
- (u) While on duty, is under the influence of an intoxicating, illegal, unauthorized, habit-forming and/or stupefying drug, including alcohol.
- (v) Being in possession of alcohol in the workplace.
- (w) Being in possession of illegal, unauthorized, habit-forming and/or stupefying drug on departmental premises.
- (x) Permitting an offender to take alcohol or any prohibited drug or to have these substances in his/her possession.
- (y) While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.
- (z) Contravention of the DCS Code of Conduct.
- (aa) Assault, attempt or threatens to assault, another employee or person while on duty.
- (bb) Incites other personnel to unprocedural and unlawful conduct.
- (cc) Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.
- (dd) Intimidation or victimization of fellow employees or other persons.
- (ee) Prevents/force other employees from belonging/not belonging to any trade union or employee organization.
- (ff) Operates any money lending scheme for employees for own benefit during working hours in the workplace.

- (gg) Carries or keeps firearms or other dangerous weapons in the workplace without the written authorization of the employer.
- (hh) Misuse of firearms and/or other dangerous weapons in the workplace.
- (ii) Breaching of security measures.
- (jj) Furnishing of false statements or evidence in the execution of his or her duties.
- (kk) Falsification of records or any other documentation.
- (ll) Participation in unprocedural, unprotected and/or unlawful industrial action.
- (mm) Commitment of a common law or statutory offence whilst on duty and/or on state premises.

**ANNEXURE B****WRITTEN WARNING**

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction. The written warning will be placed in your personal file and will remain valid for a period of six months for the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is:

If you object the warning, you may direct an appeal to **[name]** within five working days.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF MANAGER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

**ANNEXURE C****FINAL WRITTEN WARNING**

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is;

If you object the warning, you may direct an appeal to **[name]** within five working days.

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

**ANNEXURE D****NOTICE OF DISCIPLINARY MEETING**

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[A DETAILED DESCRIPTION OF MISCONDUCT MAY BE ATTACHED].

The meeting will be held at \_\_\_\_\_ [PLACE] on \_\_\_\_\_ [DATE] at \_\_\_\_\_ [TIME]. If you do not attend and cannot give reasonable ground for failing to attend, the meeting will be held in your absence.

A fellow employee or a representative or official of a recognized union may represent you.

You may give evidence to the hearing in the form of documents or through witnesses. You will be entitled to question any witness introduced by the department.

If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.

SIGNATURE OF EMPLOYEE  
DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER  
DATE

SIGNATURE OF WITNESS (if applicable)  
DATE

**ANNEXURE E****NOTICE OF APPEAL**

[DATE]

[NAME OF APPEAL AUTHORITY]

I, \_\_\_\_\_, [NAME OF EMPLOYEE] am hereby appealing against a disciplinary action imposed on \_\_\_\_\_ [DATE] at \_\_\_\_\_ [PLACE].

I attach a copy of the notice of the disciplinary enquiry and/or the written warning. [THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE

DATE

[PERSONAL DETAILS OF THE EMPLOYEE]

26. Schedule B to the regulations is hereby inserted-

### SCHEDULE B

#### MEDICAL PAROLE APPLICATION IN TERMS OF SECTION 79 OF ACT 111 OF 1998 AS AMENDED

##### A DETAILS OF OFFENDER

1. Registration No.  2. Surname and Initials
3. Date of Birth  4. Gender
5. Correctional Centre at which detained
1. I, ..... (Name and Surname) hereby consent to the full disclosure of my medical information to the extent necessary and to the persons necessary in order to process this application for medical parole. I also agree, that should I be granted medical parole, to undergo periodic medical examination by a medical practitioner in the event that this is required.

SIGNATURE OR RIGHT THUMB PRINT

SURNAME AND INITIALS AND SIGNATURE OF WITNESS

##### B DETAILS OF APPLICANT (If different from A)

1. ID No.  2. Surname and Initials
3. Date of Birth  4. Relationship to Offender

##### C. MEDICAL REPORT – to be completed by medical practitioner

1. Name and Surname of \_\_\_\_\_ 2. Practice number: \_\_\_\_\_  
Medical Practitioner
3. I examined the offender on \_\_\_\_\_ at \_\_\_\_\_
4. I ☐ did ☐ did not Refer the offender for a specialist opinion.  
(if referral to specialist attached separate report)
- 5  
(a) Diagnosis \_\_\_\_\_

(b) Medical history \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Is the offender suffering from a terminal disease or condition as specified in the conditions listed in Regulation 29A (5)? \_\_\_\_\_

(d) What is the prognosis? \_\_\_\_\_

(e) Is the offender able / unable to perform activities of daily living and self care due to the above mentioned?

Comments: \_\_\_\_\_

(f) If unable, date of onset or period he /she suffered from the condition / diseases / incapacity?

\_\_\_\_\_  
\_\_\_\_\_

(g) Is the impact of the illness or condition on activities of daily living and self care, mental, physical and intellectually capacity minor, moderate or severe? Please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(h) Has the offender's condition deteriorated permanently or reached an irreversible state? If yes, explain briefly:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(i) How has the offender managed?

\_\_\_\_\_  
\_\_\_\_\_

(j) \_\_\_\_\_



**7 Response to treatment**

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**8 Medical parole should be considered for the following reasons:**8.1 Functional or physical incapacity: 

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8.2 Mental or intellectual capacity: 

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8.3 Unable to provide self care: 

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**9 In your professional opinion does the condition of health render the offender incapable of committing further criminal acts, in particular of sexual and / or violent nature?**

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**10 If released, the offender would require the following health care:**

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**11 The health care required in 10 above is available in the area in which the offender will reside?**

(Specify health capacity, hospice, home care etc)

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Name: 

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Date: 

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(BLOCK CAPITALS)

Signature: 

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**D. DETAILS OF OFFENCE, SENTENCES AND REHABILITATION- to be completed by CMC**

1 Was the sentencing court aware of the current condition of the offender?

\_\_\_\_\_

Attached SAP62, SAP 69 and sentencing remarks where available

2. Type of offence

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Date of sentence \_\_\_\_\_

4. Length of sentence \_\_\_\_\_

5. Previous Convictions

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7 Name of Court.

Case number

8 What programmes has the offender attended?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9 What is your assessment of the risk of the offender re-offending given his present medical condition

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10 Attach latest social work report

11 Has the offender been found guilty of any disciplinary offences whilst in detention? (specify)

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**E. ARRANGEMENTS FOR offender's SUPERVISION, CARE AND TREATMENT –to be completed by Community Corrections**

(a) Where will the offender be accommodated after release on medical parole

i. Hospice

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ii. Hospital

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iii. Friends or Family

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iv. Other (Specify)

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Address

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(b) Is the address monitorable? \_\_\_\_\_

(c) Who will care for the offender and what is their relationship?

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(d) To what extent are the relatives and friends aware of the offender's medical condition?

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(e) Are relatives and friends able to take care of the offender in his/her present condition?

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\_\_\_\_\_

(f) If the offender is to be accommodated in a hospital, hospice or other institution what arrangement has been made with such institution?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

(BLOCK CAPITALS)

Signature: \_\_\_\_\_

#### **Commencement**

28. These regulations shall come into operation on \_\_\_\_\_ 2011

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